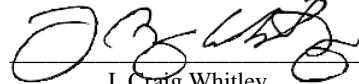




FILED & JUDGMENT ENTERED
Steven T. Salata

December 19 2022

Clerk, U.S. Bankruptcy Court
Western District of North Carolina


J. Craig Whitley
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In re:

BK RACING, LLC,

Debtor.

Chapter 11

Case No: 18-30241

MATTHEW W. SMITH,

Plaintiff,

v.

RONALD C. DEVINE *et al.*

Defendants.

Adversary Proceeding No.: 20-03014

JUDGMENT

THIS MATTER is before the Court upon: (i) the *Complaint* filed in this action on February 14, 2020 (the “Complaint”), [Doc. 1], (ii) the Court’s *Order Granting Plaintiff’s Renewed Motion to Compel and Imposing Sanctions, Including Striking Defendants’ Answer and Entering Default Judgment* entered on August 23, 2022 (the “Order”), [Doc. 81], (iii) the *Notice of Filing of Declarations in Support of Court Order Awarding Costs and Attorneys’ Fees to Plaintiff* and supporting declarations and exhibits filed on September 13, 2022 (the “Fee

Declarations”), [Doc. 84], (iv) the *Defendants’ Objection to Plaintiff’s Declarations in Support of Court Order Awarding Costs and Attorneys’ Fees to Plaintiff* filed on September 27, 2022 (the “Fee Objection”), [Doc. 87], and (v) the *Motion for Entry of Default Judgment* filed on November 16, 2022 (the “Motion”), [Doc. 92]. Based upon the Court’s findings and conclusions set out in the Order, the allegations in the Complaint which are deemed admitted, the contents of the Fee Declarations and Fee Objection, the contents of the Motion, the submissions of the parties, and the record in this case, the Court finds and concludes as follows:

1. On February 14, 2020, plaintiff Matthew W. Smith filed the Complaint in this action. [Doc. 1]. Mr. Smith is serving in a fiduciary capacity as the sole manager for reorganized BK Racing, LLC, pursuant to the terms of the confirmed bankruptcy plan in the bankruptcy case.

2. On May 14, 2020, the Defendants¹ filed their *Answer to the Complaint* (the “Answer”). [Doc. 8].

3. On August 23, 2022, the Court entered the Order which provided that the “Defendants’ answers and defenses are Stricken, and Default Judgment is entered against them on a joint and several bases as to Counts 1-16 of the Complaint.” *Order*, p. 70, ¶ 4.

4. The Order taxed the Defendants, on a joint and several basis, with the Plaintiff’s costs and attorneys’ fees incurred in pursuing the *Motion to Compel* filed on August 25, 2021 (the “Motion to Compel”), [Doc. 39], and Plaintiff’s renewed request for relief. *Order*, p. 69, ¶ 2.

5. The Order also taxed defendant Ronald C. Devine individually with the Plaintiff’s costs and attorneys’ fees incurred in pursuing the *Verified Motion to: (A) Hold Ronald Devine in*

¹ As used herein, the term “Defendants” refers collectively to defendants Ronald C. Devine, Brenda S. Devine, Randall Devine 2010 Irrevocable Trust, Christopher Devine 2010 Irrevocable Trust, Benjamin Devine 2010 Irrevocable Trust, BRC Loans, LLC, BRC Real Estate Holdings, LLC, A&R Foods, Inc., Virginia Racers Group, LLC, Property Services, Inc., US Financial Companies, LLC, and Devine Family Foundation.

Civil Contempt, and (B) Compel Discovery from the BRBRC Irrevocable Trust filed on June 15, 2021 (the “Contempt Motion”), [Doc. 22]. *Order*, p. 69, ¶ 3.

6. The damages sought by the Plaintiff in the Complaint are for a sum certain or can be made certain by computation.

7. The damages sought by the Plaintiff in the Complaint total \$31,094,099.89.

8. The Plaintiff incurred attorneys’ fees in connection with the Motion to Compel and related proceedings totaling \$155,304.00.

9. The Plaintiff incurred attorneys’ fees in connection with the Contempt Motion and related proceedings totaling \$29,335.00.

10. The attorneys’ fees incurred by the Plaintiff in connection with the Motion to Compel and the Contempt Motion are reasonable because: (i) the hourly rates are reasonable, (ii) the services rendered were reasonable and necessary, and (iii) the services were performed in a reasonable amount of time.

11. The Fee Objection is overruled.

12. The Plaintiff incurred a \$350.00 filing fee associated with filing this adversary proceeding.

Based upon the foregoing, the Court enters judgment as follows:

A. JUDGMENT IS GRANTED in favor of the Plaintiff Matthew W. Smith in his capacity as the sole manager for reorganized BK Racing, LLC on Counts 1-16 of the Complaint and it is hereby ORDERED that Plaintiff shall have and recover judgment against Defendants Ronald C. Devine, Brenda S. Devine, Randall Devine 2010 Irrevocable Trust, Christopher Devine 2010 Irrevocable Trust, Benjamin Devine 2010 Irrevocable Trust, BRC Loans, LLC, BRC Real Estate Holdings, LLC, A&R Foods, Inc., Virginia Racers Group, LLC, Property

Services, Inc., US Financial Companies, LLC, and Devine Family Foundation, Inc. jointly and severally in the amount of \$31,094,099.89;

B. IT IS FURTHER ORDERED that all damages awarded herein to Plaintiff Matthew W. Smith in his capacity as the sole manager for reorganized BK Racing, LLC against Defendants Ronald C. Devine, Brenda S. Devine, Randall Devine 2010 Irrevocable Trust, Christopher Devine 2010 Irrevocable Trust, Benjamin Devine 2010 Irrevocable Trust, BRC Loans, LLC, BRC Real Estate Holdings, LLC, A&R Foods, Inc., Virginia Racers Group, LLC, Property Services, Inc., US Financial Companies, LLC, and Devine Family Foundation, Inc. shall bear interest at the legal rate from the date of the entry of this Judgment;

C. IT IS FURTHER ORDERED that the Plaintiff's attorneys' fees related to the Motion to Compel and related proceedings are taxed against Defendants Ronald C. Devine, Brenda S. Devine, Randall Devine 2010 Irrevocable Trust, Christopher Devine 2010 Irrevocable Trust, Benjamin Devine 2010 Irrevocable Trust, BRC Loans, LLC, BRC Real Estate Holdings, LLC, A&R Foods, Inc., Virginia Racers Group, LLC, Property Services, Inc., US Financial Companies, LLC, and Devine Family Foundation, Inc. jointly and severally in the amount of \$155,304.00;

D. IT IS FURTHER ORDERED that the Plaintiff's attorneys' fees related to the Contempt Motion and related proceedings are taxed against defendant Ronald C. Devine in the amount of \$29,335.00;

E. IT IS FURTHER ORDERED that the costs of this action are taxed against Defendants Ronald C. Devine, Brenda S. Devine, Randall Devine 2010 Irrevocable Trust, Christopher Devine 2010 Irrevocable Trust, Benjamin Devine 2010 Irrevocable Trust, BRC Loans, LLC, BRC Real Estate Holdings, LLC, A&R Foods, Inc., Virginia Racers Group, LLC,

Property Services, Inc., US Financial Companies, LLC, and Devine Family Foundation, Inc. jointly and severally in the amount of \$350.00;

F. IT IS FURTHER ORDERED that all claims asserted in the bankruptcy case by Defendants Ronald C. Devine, Brenda S. Devine, Randall Devine 2010 Irrevocable Trust, Christopher Devine 2010 Irrevocable Trust, Benjamin Devine 2010 Irrevocable Trust, BRC Loans, LLC, BRC Real Estate Holdings, LLC, A&R Foods, Inc., Virginia Racers Group, LLC, Property Services, Inc., US Financial Companies, LLC, and Devine Family Foundation, Inc. are hereby DISALLOWED; and

G. The Court shall retain jurisdiction over the implementation, interpretation, and enforcement of this *Judgment*.

<i>This Order has been signed electronically. The Clerk's signature and Court's seal appear at the top of this Order.</i>	<i>United States Bankruptcy Court</i>
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